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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/499,423	07/07/1995	CAREY V. CAMPBELL	MP/84	2478

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/499,423

Applicant(s)

CAMPBELL ET AL.

Examiner

Brian E Pellegrino

Art Unit

3738

eb

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9-33,35,42-44,46-66,74-77,82-88 and 91-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9-33,35,42-44,46-66,74-77,82-88 and 91-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION
Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,3-7,9-17, 19-31,33,35,42-44,46-66,74-77,82-88,91-97 are rejected under 35 U. S.C. 102(e) as being anticipated by Shannon et al. (5641373). Shannon et al. disclose a tube base made of porous PTFE and is covered by one or more layers of porous PTFE material, col. 2, lines 21-24. Shannon also discloses the device has a microstructure of nodes and fibrils, col. 1, lines 19-30. The wall thickness has a measurement of about 0.1 mm and less than 0.25mm, see col. 16, lines 57,58. The graft can be anchored via a stent, col. 11, lines 8-14 and can also be sutured, line 55. Regarding claims 17 and 31, since the graft is inherently capable of expanding to a second circumference, it is fully capable of having a tapered profile upon expansion in a tapered vessel. The tube or article is fully capable of increasing to at least 100% the first circumference since the device is made of the same materials and has the same thickness, it inherently must possess the same physical properties.

Claims 86-88,91,95-97 are rejected under 35 U.S.C. 102(e) as being anticipated by Goldfarb (6436135). Goldfarb discloses a tube of PTFE (col. 3, lines 40-55) that is fully capable of having its circumference increase with blood pressure application. The prosthesis is for use as a vascular graft, col. 1, lines 3-5. The graft is fully capable of being adapted for" use as an endoluminal graft. The tube has a wall thickness about 0.25mm, col. 7, lines 9, 10. Regarding claim 91, the examiner asserts that the claimed physical properties (in this case, recoil) are present in the prior art material to some

extent even though they are not explicitly recited. Therefore, the examiner hereby burdens the applicant to show that these properties are not present in the prior art. Since the graft is made of the same materials and has the same thickness, it inherently must possess the same physical properties.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 18,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shannon et al. '373 in view of Hughes et al. (4728328). Shannon et al. is explained supra. However, Shannon does not disclose a tube that is branched with three ends. Hughes et al. teach a tubular prosthesis that is branched with three ends, Fig. 12. It would have been obvious to one of ordinary skill in the art to use the branched tubular form as taught by Hughes with the prosthesis of Shannon in a vessel such as the trachea requiring replacement to the two bronchi.

Claims 92-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldfarb '135. Goldfarb is explained supra. However, Goldfarb fails to disclose the minimal recoil is 14,10 or 7% or less. It would have been an obvious matter of design choice to modify the minimum recoil, since applicant has not disclosed that using any particular percentage provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the recoil taught by Goldfarb

or the claimed 14,10 or 7% or less in claim(s) 92-94 because both tubes perform the same function of providing a graft to permit blood flow through them.

Response to Arguments

Applicant's arguments filed 11/17/04 have been fully considered but they are not persuasive. Applicant's arguments fail to distinguish over the prior art because they amount to a general allegation that the claims define a patentable invention without specifically pointing out structurally how the language of the claims patentably distinguishes them from the references. According to MPEP 2112.01, the Examiner has asserted that the prior art is identical to the claimed products, thus the Applicant has the burden to show that they are not. Applicants assert that the prior art products are not made the same way or possess the claimed functional properties. However, the Applicants have failed to show the claimed invention is different structurally or materially. See *Titanium Metals Corp. v. Banner*, 778 F.2d 775,227 USPQ 773 (Fed. Cir. 1985) where a prior art product possessing the claimed structural limitations anticipated the claimed product having some claimed properties the prior art did not explicitly disclose. Applicants appear to argue the prior art tubes are made differently, but it must be noted that a comparison of the processes does NOT serve to resolve the issue concerning patentability of the product.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Thursday from 6:30am to 4pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

